

2009 DRAFTING REQUEST

Bill

Received: **10/06/2008**

Received By: **chanaman**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Jablonsky**

This file may be shown to any legislator: **NO**

Drafter: **chanaman**

May Contact:

Addl. Drafters:

Subject: **Mental Health - detent/commit**

Extra Copies:

Submit via email: **NO**

Pre Topic:

DOA:.....Jablonsky, BB0115 -

Topic:

Eliminate supplementary mental examinations

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	chanaman 10/08/2008	wjackson 10/10/2008					State
/P1			phenry 10/13/2008		lparisi 10/13/2008		

FE Sent For:

<END>

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ph/JF

FE Sent For:

<END>

2009-11 Budget Bill Statutory Language Drafting Request

- Topic: Supplemental Mental Exams
- Tracking Code: BB0115
- SBO team: Health and Insurance
- SBO analyst: Sue Jablonsky
 - Phone: 7-9546
 - Email: Sue.Jablonsky @Wisconsin.gov
- Agency acronym: DHS
- Agency number: 435
- Priority (Low, Medium, High): Medium

Intent: Eliminate references to supplemental mental exams under s.971 and instead rely on predispositional investigations. See attached.

Elimination of Supplementary Mental Examination Language

Decision Needed

Should the Department request a statutory language change to eliminate supplementary mental examination language from s. 971.17 and s. 971.17(2)(b-f)?

Background

1. Currently, when the court finds a criminal defendant to be Not Guilty by Reason of Mental Disease or Defect (NGI), the individual is committed to DHS. If the court needs additional information to determine whether appropriate placement for treatment of this individual is in the community or a Mental Health Institute (MHI), the court has the option, under s. 971.17(2) and s. 971.17(2)(b-f), of ordering a Supplementary Mental Examination (SME) or a Predispositional Investigation (PDI).
2. A SME is an inpatient examination conducted at one of the state MHIs and requires, at a minimum, a 30 day inpatient evaluation. SMEs are conducted on the most secure admission units; in FY08, the average daily rate on these units is \$730, totaling \$21,900 GPR per SME.
3. PDIs make the same determination as SMEs; however, they are completed on an outpatient basis. Although PDIs are outpatient investigations, they can be performed in a locked facility, so there are no increased security risks in comparison to SMEs. PDIs and SMEs result in identical recommendations to the court; however, certain segments of PDIs provide more comprehensive assessments than SMEs. In FY08, a PDI cost \$1,100.
4. Individuals ordered to receive a PDI or an SME have already been found NGI; therefore, each person has already received a comprehensive psychiatric evaluation. Since the court will use the information from the PDI or SME to determine whether appropriate placement of the individual is in the community or an institute, PDIs are preferable because they more thoroughly evaluate the social behavioral patterns of individuals and assess their needs in comparison to available community resources.
5. Courts often misunderstand the option of a PDI or an SME. When the court orders a SME, current procedure is for DHS to contact the court for consideration of a PDI instead of an SME. In a majority of cases, the court agrees a PDI will be more appropriate and changes its order; however, staff must spend additional time in each case to explain the PDI option to the court.

6. Elimination of SME language does not diminish the court's ability to ultimately place an individual at a MHI because the purpose of SMEs and PDIs is only to gather additional information to aid the court in making a placement decision. Currently if an individual determined to be NGI is violent or otherwise dangerous and their needs are greater than can be provided in a jail or locked facility, the court may decide, without further investigation (SME or PDI), to place that individual at a MHI. Therefore, elimination of SME language will not create a barrier for immediate commitment to a MHI of individuals that the court determines present a need for institutional care.
7. By eliminating SME language, the courts will save time by avoiding DHS inquiry into the necessity for each SME ordered. Additionally, local law enforcement agencies will save labor and transportation costs because SMEs require law enforcement to deliver individuals both to and from a MHI. Eliminating the need for repetitive communication between the courts and DHS will help to speed the dispositional process for those found NGI.
8. On an average annual basis, there are 4 SMEs and 37 PDIs ordered with a total cost of \$87,700 and \$40,700 respectively. Alternatively, the cost to have performed these SMEs with a PDI would have been \$4,400. However, eliminating the SMEs will not result in net savings to DHS; instead, it will free up secure beds, which will be filled by individuals waiting admission for inpatient competency evaluation, treatment to competency, and NGI admissions and revocations on forensic waiting lists under s. 971.14(2), 971.14(5) and 971.17(1). Currently, the number of individuals on the waiting list is 20-22. Eliminating SME language would allow the Department to treat up to 8 individuals committed under 971.14(2) on the waiting list each year.
9. The Department submitted a request with these statutory changes for the 2007 Revisor's Bill. The Law Revision Committee determined that this language makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy. Because these changes have an impact on policy, the language was not able to be included in the Revisor's Bill.

Current Language

See attachment

Proposed Change

See attachment

Desired Effective Date:	Upon passage
Agency:	DHS
Agency Contact:	William Emslie
Phone:	266-5380

SECTION 1. 51.30 (4) (b) 8m. of the statutes is amended to read:

51.30 (4) (b) 8m. To appropriate investigators, examiners, and facilities in accordance with ~~s. ss.~~ 54.36 (3), and 971.17 (2) (e), (4) (c), and (7) (c). The recipient of any information from the records shall keep the information confidential except as necessary to comply with s. 971.17.

SECTION 2. 146.82 (2) (c) of the statutes is amended to read:

146.82 (2) (c) Notwithstanding sub. (1), patient health care records shall be released to appropriate investigators, examiners, and facilities in accordance with s. 971.17 (2) (e), (4) (c), and (7) (c). The recipient of any information from the records shall keep the information confidential except as necessary to comply with s. 971.17.

SECTION 3. 971.17 (2) (a) of the statutes is amended to read:

971.17 (2) (a) ~~INVESTIGATION AND EXAMINATION.~~ The court shall enter an initial commitment order under this section pursuant to a hearing held as soon as practicable after the judgment of not guilty by reason of mental disease or mental defect is entered. If the court lacks sufficient information to make the determination required by sub. (3) immediately after trial, it may adjourn the hearing and order the department of health services to conduct a predisposition investigation using the procedure in s. 972.15 ~~or a supplementary mental examination or both~~, to assist the court in framing the commitment order.

SECTION 4. 971.17 (2) (b) of the statutes is repealed.

SECTION 5. 971.17 (2) (c) of the statutes is repealed.

SECTION 6. 971.17 (2) (d) of the statutes is repealed.

SECTION 7. 971.17 (2) (e) of the statutes is amended to read:

971.17 (2) (e) The ~~examiner appointed under par. (b)~~ person conducting the predisposition investigation shall personally observe and examine the person. ~~The examiner or facility~~ and shall have access to the person's past or present treatment records, as defined in s. 51.30 (1) (b), and patient health care records, as provided under s. 146.82 (2) (c). If the ~~examiner~~ person conducting the predisposition investigation believes that the person is appropriate for conditional release, ~~the examiner~~ he or she shall report on the type of treatment and services that the person may need while in the community on conditional release.

SECTION 8. 971.17 (2) (f) of the statutes is repealed.

SECTION 9. 971.17 (2) (g) of the statutes is amended to read:

971.17 (2) (g) Within 10 days after the ~~examiner's~~ predisposition investigation report is filed ~~under par. (e)~~, the court shall hold a hearing to determine whether commitment shall take the form of institutional care or conditional release.



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0511/?

CMH:.....
WJ

DOA:.....Jablonsky, BB0115 - Eliminate supplementary mental examinations

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

don't
sp. int

1 AN ACT ~~relating to~~; relating to: the budget.

Analysis by the Legislative Reference Bureau
HEALTH AND HUMAN SERVICES

MENTAL ILLNESS AND DEVELOPMENTAL DISABILITIES

Under current law, if a defendant is found not guilty of a crime by reason of mental disease or mental defect, the court ~~is required to~~ ^{must} commit the person to either institutional care or conditional release. If the court lacks sufficient information to determine whether the person should be committed to institutional care or to conditional release, the court may order a predisposition investigation of the person or a supplementary mental examination, or both. Under this bill, the court may order only a predisposition investigation.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 51.30 (4) (b) 8m. of the statutes is amended to read:
3 51.30 (4) (b) 8m. To appropriate examiners, investigators, and facilities in
4 accordance with s. ~~ss.~~ 54.36 (3), and 971.17 (2) (e), (4) (c), and (7) (c). The recipient

1 of any information from the records shall keep the information confidential except
2 as necessary to comply with s. 971.17.

History: 1975 c. 430; 1977 c. 26 s. 75; 1977 c. 61, 428; 1979 c. 110 s. 60 (1); 1983 a. 27, 292, 398, 538; 1985 a. 29, 176; 1985 a. 292 s. 3; 1985 a. 332 ss. 97, 98, 251 (1); 1987 a. 352, 355, 362, 367, 399, 403; 1989 a. 31, 334, 336; 1991 a. 39, 189; 1993 a. 196, 445, 479; 1995 a. 169, 440; 1997 a. 35, 231, 237, 283, 292; 1999 a. 32, 78, 79, 109; 2001 a. 16, 38; 2005 a. 25, 344, 387, 388, 406, 434; 2005 a. 443 s. 265; 2005 a. 444, 449, 485; 2007 a. 20 ss. 1817, 9121 (6) (a); 2007 a. 45, 97, 108.

3 **SECTION 2. 146.82 (2) (c) of the statutes is amended to read:**

4 146.82 (2) (c) Notwithstanding sub. (1), patient health care records shall be
5 released to appropriate examiners, investigators, and facilities in accordance with
6 s. 971.17 (2) (e), (4) (c), and (7) (c). The recipient of any information from the records
7 shall keep the information confidential except as necessary to comply with s. 971.17.

History: 1979 c. 221; 1983 a. 398; 1985 a. 29, 241, 332, 340; 1987 a. 40, 70, 127, 215, 233, 380, 399; 1989 a. 31, 102, 334, 336; 1991 a. 39; 1993 a. 16, 27, 445, 479; 1995 a. 98, 169, 417; 1997 a. 35, 114, 231, 272, 292, 305; 1999 a. 32, 78, 83, 114, 151; 2001 a. 38, 59, 69, 105; 2003 a. 281; 2005 a. 187, 344, 387, 388, 434; 2007 a. 20 s. 9121 (6) (a); 2007 a. 45, 106, 108, 130.

8 **SECTION 3. 322.0767 (2) (c) of the statutes is amended to read:**

9 322.0767 (2) (c) The court-martial has the same authority as a circuit court has
10 under s. 971.17 (2) to order the department of health services to conduct a
11 predisposition investigation using the procedure in s. 972.15 ~~or a mental~~
12 ~~examination as provided under s. 971.17 (2) (b), (c), and (e)~~ to assist the
13 court-martial in determining whether to place the person in institutional care or to
14 conditionally release the person.

History: 2007 a. 20 s. 9121 (6) (a); 2007 a. 200.

15 **SECTION 4. 971.17 (2) (title) of the statutes is amended to read:**

16 971.17 (2) (title) INVESTIGATION AND EXAMINATION.

History: 1975 c. 430; 1977 c. 353; 1977 c. 428 s. 115; 1983 a. 359; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 394; 1989 a. 31, 142, 334, 359; Sup. Ct. Order, 158 Wis. 2d xvii (1990); 1991 a. 39, 189, 269; 1993 a. 16, 98, 227; 1995 a. 27 s. 9126 (19); 1995 a. 417, 425, 440, 448; 1997 a. 35, 130, 181, 252, 275; 1999 a. 89; 2001 a. 95, 109; 2003 a. 50; 2005 a. 277, 431; 2007 a. 20 ss. 3875, 9121 (6) (a); 2007 a. 116.

17 **SECTION 5. 971.17 (2) (a) of the statutes is amended to read:**

18 971.17 (2) (a) The court shall enter an initial commitment order under this
19 section pursuant to a hearing held as soon as practicable after the judgment of not
20 guilty by reason of mental disease or mental defect is entered. If the court lacks
21 sufficient information to make the determination required by sub. (3) immediately
22 after trial, it may adjourn the hearing and order the department of health services

to conduct a predisposition investigation using the procedure in s. 972.15 or a supplementary mental examination or both, to assist the court in framing the commitment order.

History: 1975 c. 430; 1977 c. 353; 1977 c. 428 s. 115; 1983 a. 359; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 394; 1989 a. 31, 142, 334, 359; Sup. Ct. Order, 158 Wis. 2d xvii (1990); 1991 a. 39, 189, 269; 1993 a. 16, 98, 227; 1995 a. 27 s. 9126 (1997); 1995 a. 417, 425, 440, 448; 1997 a. 35, 130, 181, 252, 275; 1999 a. 89; 2001 a. 95, 109; 2003 a. 2005 a. 277, 431; 2007 a. 20 ss. 3875, 9121 (6) (a); 2007 a. 116.

SECTION 6. 971.17 (2) (b), (c) and (d) of the statutes are repealed.

SECTION 7. 971.17 (2) (e) of the statutes is amended to read:

971.17 (2) (e) The ~~examiner appointed~~ person conducting the predisposition investigation under par. (b) (a) shall personally observe and examine the person. The ~~examiner or facility~~ and shall have access to the person's past or present treatment records, as defined in s. 51.30 (1) (b), and patient health care records, as provided under s. 146.82 (2) (c). If the ~~examiner~~ person conducting the predisposition investigation believes that the person is appropriate for conditional release, the ~~examiner~~ person conducting the predisposition investigation shall report on the type of treatment and services that the person may need while in the community on conditional release.

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SECTION 8. 971.17 (2) (f) of the statutes is repealed.

SECTION 9. 971.17 (2) (g) of the statutes is amended to read:

971.17 (2) (g) Within 10 days after the examiner's predisposition investigation report is filed ^{plain} ~~under~~ par. (e), ^{so 972015} the court shall hold a hearing to determine whether commitment shall take the form of institutional care or conditional release.

History: 1975 c. 430; 1977 c. 353; 1977 c. 428 s. 115; 1983 a. 359; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 394; 1989 a. 31, 142, 334, 359; Sup. Ct. Order, 158 Wis. 2d xvii (1990); 1991 a. 39, 189, 269; 1993 a. 16, 98, 227; 1995 a. 27 s. 9126 (19); 1995 a. 417, 425, 440, 448; 1997 a. 35, 130, 181, 252, 275; 1999 a. 89; 2001 a. 95, 109; 2003 a. 20; 2005 a. 277, 431; 2007 a. 20 ss. 3875, 9121 (6) (a); 2007 a. 116.

(END)

20

(4) ^(CS+B) SECTION 9322 ^(B) Initial Applicability; Health Services.
 (1) ^(CS) Supplementary Examinations. ^{mental} The treatment of section 97.17
 (2) (a) of the statutes just applies to judgments entered on
 the effective date of this subsection.



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0511/P1
CMH:wlj:ph

DOA:.....Jablonsky, BB0115 - Eliminate supplementary mental examinations

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24 ~~supplementary mental examination or both~~, to assist the court in framing the
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(END)